

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

RECEIVED  
CITY OF ROCKVILLE  
Exhibit No. 65  
Zoning Ordinance Rewrite  
PH Dates: 6/16 & 6/30/08

July 24, 2008

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Mayor Susan Hoffman and  
Members of the Rockville City Council  
Rockville City Hall  
111 Maryland Avenue  
Rockville, MD 20850

Re: City of Rockville Zoning Ordinance Revisions

Dear Mayor Hoffman and Members of the Rockville City Council:

This firm represents Foulger-Pratt Development, Inc. ("Foulger-Pratt"), the developer of Rockville Metro Plaza ("Rockville Metro Plaza"). Rockville Metro Plaza is located at the northwest corner of the Rockville Pike and East Middle Lane intersection.

The purpose of this letter is to suggest certain modifications to the language of Article 8, relating to the validity of use permits and Article 14 relating to the Planned Development Zones ("PD Zone") in the Draft Zoning Ordinance ("DZO"). We believe that these recommended amendments will both clarify the language of the DZO and affect what we understand to be the intent of the Planning Commission and the City's Planning Staff.

1. Background on the Rockville Metro Plaza PDP

Rockville Metro Plaza is being developed pursuant to Planning Development Plan Approval No. PDP2004-00008, which was adopted by the Mayor and Council via Resolution No. 5-05 on March 7, 2005 ("Rockville Metro Plaza PDP"). The DZO currently recommends rezoning Rockville Metro Plaza to the PD-Metro Center ("PD-MC") Zone. The text of the DZO states that the PD-MC zone "is regulated in accordance with the Preliminary Development Plan PDP2004-00008 approved by the Mayor and Council by Resolution No. 5-05 on March 7, 2005, as may be amended." See Section 25.14.33. Furthermore, the designated equivalent zone is Mixed-Use Transit District ("MXTD"). A copy of all sections of the DZO referenced in this letter are attached hereto at Exhibit "A".

On December 2, 1998, the City Planning Commission ("Commission") approved Use Permit USE97-0577 ("Use Permit") for a 620,000-square-foot office and retail complex (597,000 square feet of office and 23,000 square feet of street-level retail and structured parking above and below grade) consisting of three 10-story buildings located at the northwest corner of the

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Rockville Pike and East Middle Lane intersection, subject to conditions. The Commission later confirmed this decision by issuing the use permit approval letter dated January 5, 1999.

On November 29, 2000, the Commission granted a one-year extension of the Use Permit, to January 5, 2002. Within this extension period, construction of Building I was commenced on the Property (Building Permit Number BLD2001-06104 was issued by the City for Building I on August 22, 2001). Building I consists of approximately 225,000 square feet (approximately 222,000 square feet of office and 3,000 square feet of retail). In connection with an amendment to Building III, Foulger-Pratt applied for, and received, the Rockville Metro Plaza PDP. Soon thereafter, the Amended Use Permit USA97-0577A was approved. The approval of the Amended Use Permit was evidenced by the May 23, 2005 Commission approval letter, which is attached hereto at Exhibit "B".

In regard to the original use permit and the amended use permit, the May 23, 2005 letter states

the approved use permit shall remain in full force and effect until the revised Use permit implementing the PDP is approved and the developed signs the revised use permit approval. Pursuant to Section 25-193 of the (current) zoning ordinance, *the validity period shall relate back to the approved use permit*, giving the developer until December 2, 2010 to commence construction of Phase II and, thereafter, if 60% of the project (considering all three phases is constructed on or before December 2, 2010, the developer shall [have] until December 2, 2012 to commence construction of Phase III of the project. (Emphasis supplied)

The May 23, 2005 letter makes clear that the Amended Use Permit implements the Rockville Metro Plaza PDP approval. To that end, as will be discussed within, prior to the adoption of the Rockville Metro Plaza PDP, a zoning text amendment was approved and the language of Section 25-193 of the (current) zoning ordinance was changed to allow up to a 14-year validity period for the Amended Use Permit. Specifically, under the language of the current zoning ordinance, Foulger-Pratt has until December 2, 2010 to commence construction of Phase II and, thereafter, if 60% of the project (considering all three phases are constructed on or before December 2, 2010), it would have until December 2, 2012 to commence construction of Phase III of the project.

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2. Use Permit Validity Periods under the DZO

As discussed above, in the May 23, 2005 letter, the language of Section 25-193 of the (current) zoning ordinance permitted a 14-year building permit validity period for Foulger-Pratt, meaning that Foulger-Pratt would have until December 2, 2010 to commence construction of Phase II and, thereafter, if 60% of the project (considering all three phases is constructed on or before December 2, 2010), it should have until December 2, 2012 to commence construction of Phase III of the project.

However, the DZO does not reflect the language regarding the 14-year commitment. Specifically, Section 25.08.02(4) of the DZO states:

Use Permits for Multi-Phase Projects.

- (a) All phases of a multi-phase project for which a use permit or details application has been approved as of \_\_\_\_\_ (date of adoption) must be commenced within eight (8) years from the date of the approval letter of the Approving Authority or the use permit will expire. A use permit will become void for those buildings within a multiple building development for which construction has not commenced within eight (8) years from the date of the use permit approval letter.
- (b) Any multi-phase project for which a use permit was approved prior to October 25, 1993 that has not commenced construction on all buildings as of \_\_\_\_\_ [effective date] has eight (8) years from \_\_\_\_\_ [effective date] to commence construction on all buildings or the use permit will expire.
- (c) Nothing herein shall affect the validity of a use permit for a building constructed in accordance with the requirements of the use permit prior to the expiration for the time frames set forth herein.

Therefore, we would recommend that the DZO's language be clarified to state (all changes in bold italics):

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(a) All phases of a multi-phase project, for which a use permit or details application has been approved as of \_\_\_\_\_ (date of adoption) must be commenced within eight (8) years from \_\_\_\_\_ [effective date] to commence construction on all buildings or the use permit will expire, *except those developments covered in Article 14 for which an alternate validity period was established in a prior Zoning Ordinance. In the case of such developments, the validity period established in a prior zoning ordinance will carry forward into the current zoning ordinance.*

We believe that such change will make clear the intent of the DZO to permit the Rockville Metro Plaza development timelines approved under the PDP and the current zoning ordinance to survive.

3. Requests for changes to the PD language of the DZO

A. **Clarify the Language on the Purpose of the PD Zone**

From our monitoring of the Planning Commission's deliberations and our meetings with Staff, we understand that the general intent of the PD Zone is to permit the subsequent approval, and construction, of the improvements that were detailed in original PDP (or CDP) resolutions of approval in accord with the applicable development standards in place at the time that the PDPs were approved. (*See* Section 25.14.07(b)). Therefore under the PD Zone, new approvals should not be necessary for construction of a project detailed within a particular PDP.

However, after reviewing the DZO, we believe that the language of Section 25.14.07(a), which establishes the purpose of the PD Zones, should be modified to clearly achieve these stated goals. Therefore, we respectfully suggest that the language of Section 25.14.07(a) be amended as discussed below (all proposed amendments in bold and italics):

Purposes – Prior to \_\_\_\_\_ [effective date of the new zoning ordinance], development with special provisions for development standards and types of uses was approved through several types of special development procedures (Comprehensive Planned Development, Planned Residential Unit, Preliminary Development Plan, I-3 Zone Optional Method, etc.). Under these procedures, the development approved may have little or no relation to the underlying zone or zones. In order to more clearly

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identify the approved development and to ease the administration of these properties in the land records, these special developments are each being placed in its own planned development zone. As such, the resolutions of approval adopted by the Mayor and Council and the Preliminary Development Plans approved by the Planning Commission, along with any accompanying documents, any subsequent amendments thereto, and related development standards, are included by reference in the respective planned development zones, ***and shall be the applicable standards for the implementation of development approvals pursuant thereto.*** In addition, one or more equivalent zones are designated for each planned development zone.

See Section 25.14.07(a)(with proposed additions in bold and italics)

The addition of the proposed language makes it clear that the respective development standards established in the Rockville Metro Plaza PDP, and other PDPs, will survive and be adopted as the applicable standards for implementation of the development plan as was intended by the Mayor and Council when it approved the Rockville Metro Plaza PDP.

**B. Proposed Changes to the Section on Amending a PDP**

As you are aware, if a developer, such as Foulger-Pratt, were to change a structure within a PDP, under certain circumstances it must apply for an amendment to the PDP. The amendment application will be treated as a Project Plan application under the designated equivalent zone.

However, the current wording of Section 25.14.07(d)(6), which discusses the amendment triggers, does not properly define the scope of the PDP changes that are necessary to trigger the amendment process. First, although certain trigger standards are set forth at Section 25.14.07(d)(6)(a)(i – v)<sup>1</sup>, we believe that it does not appear reasonable that any increase in

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<sup>1</sup> Under the DZO, as drafted, amendments to a PDP are required when:

(a) When required – Any of the following proposed changes to a Planned Development project will require approval of a development plan amendment by the Mayor and Council:

(i) Any increase in the intensity of the development (dwelling units, gross square footage, etc.; (ii) Any increase in building heights; (iii) Types of uses not previously approved; (iv) A major relocation of public streets; (v) A reduction or expansion of public or private open space:

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intensity or height or change of use, no matter how insignificant, should trigger the application of new standards under the equivalent designated zone. Second, the catchall clause at 25.14.07(d)(6)(a)(vi) appears overly broad and discretionary. This catch-all clause states that a developer could be required to file a PDP amendment for “[s]uch *other* proposed change in the project that the *Planning Commission determines* to be of such significance as to require an amendment to the development plan.” Section 25.14.07(d)(6)(a)(vi) (Emphasis supplied).

In light of the above, we request that to prevent unnecessary process and uncertainty, the language above be modified to eliminate the catchall clause. Moreover, we suggest that the language of the specific amendment triggers be modified to state that the uses and development standards existing at the time of the original PDP approval would apply to such amendment without triggering the PDP amendment process. Finally, if the concern is to bring the proposal into conformance with the new standards of the equivalent zone if the amendments are considered substantial, then the standards set forth above could specify a dimension, area or percentage range above which the need to file an amendment to the PDP would be triggered.

Under our proposal, we believe that Section 25.14.07(d)(6)(a) should be amended to read (all changes in bold and italics):

(a) [Amendments] When required – Any of the following proposed changes to a Planned Development project will require approval of a development plan amendment by the Mayor and Council:

(i) Any increase in the intensity of the development (dwelling units, gross square footage, etc), *except for an increase that would comply with the building standards of the PDP’s underlying zone at the time that the PDP was approved, in which case no amendment is necessary;*

(ii) Any increase in building heights, *except for an increase that would comply with the building standards of the PDP’s underlying zone at the time that the PDP was approved, in which case no amendment is necessary;*

(iii) Types of uses not previously approved, *except for those uses that were permitted by the PDP’s underlying zone at*

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See Section 25.14.07(d)(6)(a).

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*the time that the PDP was approved, in which case no amendment is necessary;*

(iv) A major relocation of public streets;

(v) A reduction or expansion *of* public or private open space, *except for a change that would comply with the building standards of the PDP's underlying zone at the time that the PDP was approved, in which case no amendment is necessary;*

We believe that such changes would clarify the language of the DZO and would accurately reflect the intent of the Planning Commission and Staff to permit development of a PDP to continue under the approved PDP and the underlying zone existing at the time that the PDP was approved. A failure to place limitations on the amendment triggers causes unnecessary uncertainty for both the developer and the City and does not meet the goal of the PD section of the DZO, which we understand to be to permit a fully vetted and approved PDP project to move forward to completion without additional process and/or review.

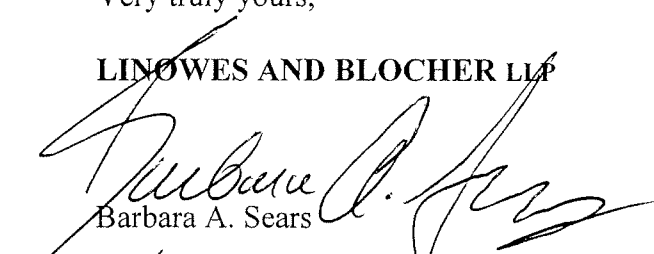
4. Conclusion


For the reasons stated above, we believe that the noted changes should be made to reflect the intent and purpose of the PD Zone section of the DZO.

We hope the above and the attached information is helpful to you. Please contact us to discuss how you would like to proceed.

Very truly yours,

**LINOWES AND BLOCHER LLP**

  
Barbara A. Sears

  
Samantha L. Mazo

Enclosures

## Article 14 – Special Zones

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### **25.14.01 – Historic District Zones**

- a. *Purpose* – ~~The purposes of Historic District Zones are~~ overlay zones whose purposes are to:

1. Safeguard the heritage of the City by preserving sites, structures, or areas which reflect elements of cultural, social, economic, political, archaeological, or architectural history;
2. Stabilize and improve the property values of those sites and structures, and the adjacent neighborhood;
3. Foster civic beauty;
4. Strengthen the local economy; and
5. Promote the preservation and the appreciation of those sites and structures for the education and welfare of the residents of the City.

- b. *Location*

1. Underlying Zoning – The Historic District Regulations are in addition to the underlying residential or nonresidential zoning regulations.
2. Established Location – The Historic District Zones are depicted on the zoning map incorporated into these regulations in Article 2.
3. Future Location – The Mayor and Council may establish, change, layout, and define future Historic District Zones which are of local, state, or national or historical, archaeological, or architectural significance.

- c. *Historic District Commission* – The Historic District Commission is subject to the provisions of Article 25.04.04.

- d. *Designation of Properties*

1. *Initiation of Process* – The process of evaluating a property for possible historic designation due to its historic, archaeological, or architectural significance begins upon the occurrence of any of the following:

- (a) The filing of an application nominating the property for historic designation by one (1) or more of the following:
    - (i) The property owner;
    - (ii) The Historic District Commission;
    - (iii) The Mayor or Council;
    - (iv) The Planning Commission; or
    - (v) Any other person;
  - (b) The filing of an application by the property owner requesting the evaluation of the historic, archaeological, or architectural significance of the property; or
  - (c) The filing of an application for a demolition permit for any property 50 years or older; or
  - (d) The filing of a Natural Resources Inventory identifying a potentially significant historic resource.
2. *Application Review* – Upon the filing of an application for nomination, evaluation, or demolition, the Chief of Planning must evaluate the subject property for compliance with the City's criteria for historic designation.
- ~~Recommendation to Historic District Commission; Exception~~*
- (a) ~~The Chief of Planning must make a written recommendation to the Historic District Commission as to the eligibility of the property for historic designation, except as provided in subsection 25.14.01.d.3.(b) below~~
  - (b) ~~Where the Chief of Planning determines, as part of a review of a demolition permit application, that the property is not eligible for historic designation under the City's criteria for such designation, the Chief of Planning shall sign off on the demolition permit application without referral to the Historic District Commission.~~
3. *Historic District Commission Public Meeting* – The Historic District Commission will hold a public meeting in compliance with the notice provisions of section 25.05.03 to review the historical, archaeological, and

	Uses	Zone	Conditional requirements or related regulations
		Public Park Zone	
Miscellaneous uses (con't)	Wireless communication facility not located entirely within an existing building, or on the roof or side of a building, or attached to an existing structure, including, but not limited to antennas on a freestanding ground mounted antenna support structure	S	See Sec. 25.09.08; 25.15.02.s
	Athletic field, picnic area, public pool, exercise court, <u>and</u> related active and passive recreational facilities with associated accessory uses and structures, and support uses such as stormwater control facilities.	P	
e. Accessories		P	See Secs. 25.09.01, and .02

- g. ~~Dimensional and Development Standards~~ – The dimensional development standards of this zone must be in accordance with the dimensional are those development standards recommended for each individual park or recreation area of the City by the City Parks, Recreation, and Open Space Plan as adopted and amended by the Mayor and Council.

#### 25.14.07 – Planned Development Zones

- a. *Purposes* – Prior to \_\_\_\_\_ [effective date], developments with special provisions for development standards and types of uses were approved through several types of special development procedures (Comprehensive Planned Development, Planned Residential Unit, Preliminary Development Plan, I-3 Zone Optional Method, etc.). Under these procedures, the development approved may have little or no relation to the underlying zone or zones. In order to more clearly identify the approved development and also to ease the administration of these properties in the land records, these special developments are each being placed in its their own Planned Development Zone. As such, the resolutions of approval adopted by the Mayor and Council and the Preliminary Development Plans approved by the Planning Commission, along with any accompanying documents, any subsequent amendments thereto, and related development standards, are included by reference in the respective Planned Development Zones. In addition, one (1) or more equivalent zones are designated for each Planned Development Zone.

b. *Uses*

1. Only those uses specifically permitted by any of the following are allowed in a Planned Development Zone:
  - (a) The resolution of approval or an approved preliminary development plan; or
  - (b) The provisions of the Zoning Ordinance in effect and applicable to the particular planned development at the time of the resolution of approval or approved preliminary development plan.
2. Notwithstanding the provisions of subsection 25.14.07.b.1. above, the Mayor and Council, in connection with an amendment to ~~the~~ an approved development plan, may allow one (1) or more of those uses set forth in the equivalent zone specified for those areas of the development plan designated for nonresidential uses.

c. *Zones Established*

1. *Principally Single-Unit Residential Developments – The following are principally single-unit residential developments in the City:*
  - (a) PD-RS – Rockshire;
  - (b) PD-FM – Fallsmead;
  - (c) PD-FM2 – Fallsmead 2;
  - (d) PD-FB – Fallsbend;
  - (e) PD-CH – Carter Hill;
  - (f) PD-BA – Barnside Acres;
  - (g) PD-FL – Flint Ledge Estates;
  - (h) PD-RH – Rose Hill;
  - (i) PD-RHF – Rose Hill Falls;
  - (j) PD-BU – Buckingham Prop.;

- (k) PD-CL – Chestnut Lodge;
  - (l) PD-NM – New Mark Commons;
  - (m) PD-DF – Dawson Farm;
  - (n) PD-MH – Meadow Hall;
  - (o) PD-RF – Redgate Farm; and
  - (p) PD-LG – Legacy.
2. *Principally Mixed-Use Residential and Commercial Development - The following are principally mixed-use residential and commercial developments in the City:*
- (a) PD-KF – King Farm;
  - (b) PD-FG – Fallsgrove;
  - (c) PD-UR – Upper Rock;
  - (d) PD-TO – Tower Oaks;
  - (e) PD-KSI – KSI Apartments;
  - (f) PD-TC – Twinbrook Commons;
  - (g) PD-RCI – Rockville Center, Inc.; and
  - (h) PD-TS – Town Square.
3. *Principally Commercial Development - The following are principally commercial developments in the City:*
- (a) PD-SG – Shady Grove;
  - (b) PD-MC – Metro Center; and
  - (c) PD-CB – Champion Billiards.

d. *Development Standards*

1. General Policy - The development projects located in the Planned Development Zones were approved by the Mayor and Council or Planning Commission as a unified, coherent design. Depending on the project, the development standards may, or may not, have been specified in the project approvals. In some instances the development standards of the underlying zone, as set forth in the previous ordinance, applied to some aspects of the development project. In addition, a number of the projects are subject to annexation agreements or development agreements with the City that have specific terms for how the development will proceed.
2. Equivalent Zone Development Standards - ~~In the absence of specific development standards and requirements as set forth in the resolutions of approval, or approved Preliminary Development Plan, it is the intent of this Chapter that the development standards of the specified equivalent zone for each Planned Development Zone be applied where appropriate, in accordance with the provisions of this section.~~

Where, in the determination of the Approving Authority, the resolution of approval or approved Preliminary Development Plan does not provide specific standards, the development standards for the equivalent zone designation for each Planned Development Zone apply to:

- (a) Any portion of a Planned Development project that does not have either an approved use permit or an approved detailed application, or
- (b) Any portion of a Planned Development project for which an amendment to an approved use permit or detailed application is sought.

3. Approved Development Standards - The development standards (including, but not limited to, those standards for building heights, setbacks, lot coverage, lot sizes, density, and open space) set forth in the resolution of approval, approved Preliminary Development Plan, approved use permit, or approved detailed application apply to the following:
  - (a) Completed Planned Development projects;
  - (b) Completed portions of Planned Development projects;
  - (c) Replacement in kind in completed planned development projects or completed portions of such development projects; and

- (d) Portions of a Planned Development project where construction has not commenced but where a use permit or detailed application has been approved as of \_\_\_\_\_ [effective date]. Implementation of an approved use permit or detailed application may proceed unless those approvals expire without implementation.

~~Equivalent Zone Development Standards~~ Where, in the determination of the Approving Authority, the resolution of approval or approved Preliminary Development Plan does not provide specific standards, the development standards for the equivalent zone designation for each Planned Development Zone apply to:

- ~~(a) Any portion of a Planned Development project that does not have either an approved use permit or an approved detailed application, or~~
- ~~(b) Any portion of a Planned Development project for which an amendment to an approved use permit or detailed application is sought.~~

4. Development Standards for Amendment to a Planned Development Approval  
– Unless waived in accordance with subsection 25.14.07d.5., the development standards for the equivalent zone designated for each Planned Development Zone shall apply to that portion of an approved development plan for which an amendment to the resolution of approval or approved Preliminary Development Plan is sought.

- (a) The development standards for the equivalent zone will supersede the development standards contained in the resolution of approval or the approved Preliminary Development Plan for that portion of the development plan subject to the amendment.
- (b) Subject to the provisions of subsection 25.14.07.d.6.(c), nothing herein shall preclude the Mayor and Council from applying certain standards of the equivalent zone to the entire Planned Development project if, pursuant to subsection 25.14.07.d.6. below, the portion of the development plan being amended is not required to comply with all of the development standards of the equivalent zone.

5. Waiver of Equivalent Zone Standards- The Approving Authority may waive the application of one (1) or more of the development standards of the designated equivalent zone upon a finding that the applicant has shown good cause as to why the development standard should not apply to any portion of the Planned Development project. In determining whether the burden of

establishing good cause has been met, the Approving Authority must consider the following:

- (a) Whether the development standard of the equivalent zone is consistent with the completed portion of the Planned Development project;
- (b) Whether applying the development standard of the equivalent zone is consistent with good planning and design principles;
- (c) Whether applying the development standard of the equivalent zone is aesthetically pleasing;
- (e) Whether applying the development standard of the equivalent zone is technically feasible;
- (f) Whether applying the development standard of the equivalent zone presents a practical difficulty (The cost of applying the standard, alone, shall not constitute a practical difficulty.); and
- (g) Such other factor as the Approving Authority deems appropriate.

6. *Amendment of a Planned Development Plan*

- (a) *When Required* – Any of the following proposed changes to a Planned Development project will require approval of a development plan amendment by the Mayor and Council:
  - (i) Any increase in the intensity of the development (dwelling units, gross square footage, etc.);
  - (ii) Any increase in building heights;
  - (iii) Types of uses not previously approved;
  - (iv) A major relocation of public streets;
  - (v) A reduction or expansion of public or private open space; and
  - (vi) Such other proposed change in the project that the Planning Commission determines to be of such significance as to require an amendment of to the development plan.
- (b) *Procedure* - Any proposal to amend a previously approved planned development plan (exploratory plan, concept plan, or preliminary

development plan) requires the filing of a development plan amendment application with the Chief of Planning. Such application must comply, and will be processed in accordance, with the requirements for a project plan as set forth in Article 7 of this Chapter.

(c) Limitations – Amendments to a planned development project approved by the Mayor and Council shall be limited to the substance or area encompassed by the amendment application and may not affect other aspects of the approved planned development project without the consent of the applicant. Nothing, however, shall preclude the Mayor and Council from considering all aspects or areas of the approved planned development project in determining whether or not the requested amendment is appropriate.

7. *Site Plan Required* – Consideration of applications for The implementation of development consistent with the approved development plan will require approval of a site plan in accordance with the requirements set forth in Article 7. The Chief of Planning will determine the level of review required, based on the nature and complexity of the proposed site plan.

#### 25.14.08 – PD-RS (Rockshire)

- a. Exploratory Application Approved - The PD-RS Zone is regulated in accordance with the exploratory application approved by the Mayor and Council by Resolution No. 21-66 on March 7, 1966, as may be amended.
- b. *Designated Equivalent Zones*
  1. Designated equivalent zone (commercial development areas only): Mixed-Use Neighborhood Center (MXNC).
  2. Designated equivalent residential zones:
    - (a) Single unit residential detached areas ~~only~~: R-60;
    - (b) Single unit residential attached areas: RMD-10.

#### 25.14.09 – PD-FM (Fallsmead)

- a. Planned Residential Unit Approved - The PD-FM Zone is regulated in accordance with the Planned Residential Unit PRU1966-00003 approved by the Mayor and Council by Resolution No. 2-66 on January 3, 1966, as may be amended.

- b. Designated Equivalent Zone - Designated equivalent zone: Mixed-Use Employment ~~District~~-Zone (MXE).

**25.14.33 – PD-MC (Metro Center)**

- a. Planned Development Approved - The PD-MC (Metro Center) Zone is regulated in accordance with the preliminary development plan PDP2004-00008 approved by the Mayor and Council by Resolution No. 5-05 on March 7, 2005, as may be amended.
- b. Designated Equivalent Zone - Designated equivalent zone: Mixed-Use Transit ~~District~~-Zone (MXT).

**25.14.34 – PD-CB (Champion Billiards)**

- a. Planned Development Approved - The PD-CB Zone is regulated in accordance with the preliminary development plan (PDP200-00011) approved by the Mayor and Council by Resolution No. 14-06 on October 23, 2006, as may be amended.
- b. Designated Equivalent Zone - Designated equivalent zone: Mixed-Use Corridor Zone (MXC).

## Article 8 – Transitional Provisions, Nonconformities, Nonconforming Alteration Approval

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### 25.08.01 – Purpose of this Article

It is recognized that the adoption of this Chapter will change the previous zoning policy and regulations in the City and thereby render some existing developments nonconforming. This Article is intended to address development both in the pipeline as of (date of adoption) and existing development that will be considered nonconforming. The provisions of this Article are intended to recognize the interests of property owners in continuing to develop property that has been previously planned and approved and to use property previously built, while promoting the future establishment and reestablishment of structures and uses that comply with current zoning policy and regulations.

### 25.08.02 - Transitional Provisions

- a. *Purpose* – In order to maintain continuity for development approvals filed and processed in good faith under the provisions of the prior ordinance, the following provisions are included ~~or~~ in order to provide a process for completing the development review process.
- b. *Previously Approved Development Projects* – All development projects except those covered in Article 14, Special Zones, for which any development approval has been granted by an Approving Authority prior to \_\_\_\_\_ [effective date] may proceed to completion and operate in accordance with the terms of such development approval so long as said approval does not expire.
- c. *Expiration of Development Approval* – Upon the expiration of any development approval granted by an Approving Authority for a development prior to \_\_\_\_\_ [effective date], or upon the granting of any subsequent superseding permit or other approval, the requirements of this Chapter shall apply to any new application for approval for development.
- d. *Subsequent Approvals* – Notwithstanding subsections (a) and (b) of this Section, the following provisions apply to any portion of a previously approved development project for which a building permit is not obtained by the expiration date of the approval as provided below,
  1. *Use Permits* – Construction under a use permit must commence within two (2) years from the date of the approval letter of the Planning Commission or Chief of Planning or the use permit will expire. For good cause shown, not more than two (2) extensions not exceeding one (1) year each, may be granted by the original Approving Body Authority

## 2. *Special Exception*

- (a) If a use permit is required to implement a special exception, the use permit application must be filed within six (6) months from the date of the approval letter of the Board of Appeals or the special exception will expire. The approval process for the necessary use permits will follow the process in effect at the time of the special exception approval.
  - (b) If a building permit is required for a special exception, the building permit application must be filed within 12 months from the date of the approval letter of the Board of Appeals or the special exception will expire.
  - (c) If a neither a use permit nor a building permit is required to establish a use, such use must be established within 12 months of the approval letter of the Board of Appeals or the special exception will expire.
  - (d) Previously approved special exceptions for uses that are permitted or conditional uses under this Chapter may continue to exist as such permitted or conditional use and the special exception approval shall become void; provided that if the use does not satisfy the requirements of the applicable zone, such use may continue as a valid special exception subject to all conditions of the special exception approval.
3. *Variances* – Variances approved but not fully implemented prior to the effective date of this Chapter may continue in full force and effect, provided that the variance is implemented in accordance with Section 25.06.03.

## 4. *Use Permits for Multi-Phase Projects*

- (a) All phases of a multi-phase project for which a use permit or detailed application has been approved as of (date of adoption) must be commenced within eight (8) years from the date of the approval letter of the Approving Authority or the use permit will expire. A use permit will become void for those buildings within a multiple building development for which construction has not commenced within eight (8) years from the date of the use permit approval letter.
- (b) Any multi-phase project for which a use permit was approved prior to October 25, 1993 that has not commenced construction on all buildings as of \_\_\_\_\_ [effective date] has eight (8) years from \_\_\_\_\_ [effective date] to commence construction on all buildings or the use permit will expire.

- (c) Nothing herein shall affect the validity of a use permit for a building constructed in accordance with the requirements of the use permit prior to the expiration for the time frames set forth herein.

#### **25.08.03 – Nonconformities, in General**

Any use or development rendered non-conforming by the adoption of this Chapter or any amendment thereto, may continue subject to the limitations provided in this Chapter.

#### **25.08.04 – Qualifying Substandard Lots**

Any lot legally recorded by subdivision plat that is at least 40 feet wide is deemed to be a buildable lot even though it may have less than the minimum area required in any current residential zone. Such lots may be developed under the zoning development standards in effect when the lot was recorded except that:

1. A lot created by deed prior to October 1, 1957 that is a minimum of 5,000 square feet in area and at least 40 feet wide may be recorded as a buildable lot;
2. The maximum building height and maximum building coverage for any building or structure must comply with the current standards of the zone in which the lot is classified;
3. The main building setbacks are as follows:
  - (a) Front: 25 feet,
  - (b) Side: Seven (7) feet, and
  - (c) Rear: 20 feet, and
4. Construction on such lots must conform to any current established building line.

#### **25.08.05 – Nonconforming Uses**

- a. *Limitations on Expansion, Alteration, or Enlargement of Non-Conforming Uses* – No nonconforming use may be ~~extended~~ expanded, altered, or ~~expanded~~ enlarged, except as follows:

1. A nonconforming use may be extended throughout those parts of a building or structure which were specifically designed or constructed for such use prior to

\_\_\_\_\_ [effective date] and which parts were either completed or substantially completed structurally prior to such date: and

2. Structural alterations of a building or structure, the use of which does not conform to the requirements of this Chapter, may be made only if the alteration is for the purpose of conforming to the use requirements of this Chapter, or to maintain the building or structure in safe repair.

b. *Termination*

1. The right to continue a nonconforming use terminates if:
  - (a) Damage or destruction of the building or structure encompassing the nonconforming use exceeds 50% of the building or structure's structural integrity; ~~or~~
  - (b) The nonconforming use is replaced by a permitted, conditional, or special exception use; or
  - (c) The use ceases for at least three (3) calendar months. A nonconforming use is not considered to have ceased if:
    - (i) Approval and execution of modifications or renovations are pursued to continue the use, subject to a validly issued building permit or occupancy permit or nonconforming alteration approval; or
    - (ii) The property is being actively marketed for tenants to continue the use. A sign on the property advertising its availability is not, by itself, evidence of active marketing.
2. Notwithstanding the foregoing, if the property remains vacant for a period of 12 months, the nonconforming use is terminated. The property owner may request a six (6) month extension of the termination from the ~~Mayer and Council Planning Commission~~ Planning Commission for good cause shown. Such request must be submitted before the termination date. No more than two (2) such extensions may be granted.

**25.08.06 – Development Standards Nonconformities**

- a. *Limitations on Expansion, Alteration, or Enlargement of Development Standards Nonconformities* - A development standards nonconformity must not be extended, altered, or expanded, except as follows:



City of Rockville  
111 Maryland Avenue  
Rockville, Maryland  
20850-2964  
www.rockvillemd.gov

Community Planning and  
Development Services  
240-314-8200  
TTY 240-314-8187  
FAX 240-314-8210

Historic Preservation Office  
240-314-8230

Inspection Services Division  
240-314-8240

Long Range Planning  
Division  
240-314-8200

Planning Division  
240-314-8220

Revitalization/Housing  
Division  
240-314-8200

MAYOR  
Larry Marano

COUNCIL  
Robert E. Dorsey  
John F. Hall, Jr.  
Susan R. Hoffmann  
Anne M. Robbins

CITY MANAGER  
Scott Willey

CITY CLERK  
Claire F. Funkhouser

CITY ATTORNEY  
Paul T. Glasgow

May 23, 2005

Mr. Clayton Foulger  
Foulger-Pratt Companies  
9600 Blackwell Road  
Rockville, MD 20854

Re: *Amended Use Permit Amendment Application USA97-0577A*  
Rockville Metro Plaza  
E. Middle Lane Rockville Pike

Dear Mr. Foulger:

In accordance with Section 25-681 of the Rockville Zoning and Planning Ordinance, the above referenced Use Permit Amendment was approved by the Planning Commission on April 13, 2005. The application is to construct a mixed use project consisting of approximately 597,000 square feet of general office space and 23,000 square feet of retail space, as shown in the Preliminary Development Plan PDP2004-00008, approved by the Mayor and Council on March 7, 2005.

By a vote of 4 to 0, with 3 absent, the Planning Commission has approved this use permit amendment. The approval is subject to full compliance with the following conditions, and as shown on the attached exhibit "A":

1. Submission, for the approval of the Chief of Planning, of 11 copies of the Use Permit plan revised according the Planning Commission Exhibit "A", to include the following:
  - a. Building height not to exceed 115 feet for the Phase III building, as measured from the 448-foot elevation above sea level. The other two buildings may not exceed 100 feet above the 448-foot level.
  - b. The Phase III building, exclusive of the parking garage, to be set back 30 feet from the west property line;
  - c. No increase in the gross floor area of the Phase III building;
  - d. The additional story added to the Phase III building must be set back at least 10 feet from the building façade on all sides.
  - e. Existing easements, including the easement for truck access to East Middle Lane from Block 5 of the Town Square development, to be shown on the site plan.
2. Except to the extent already satisfied, all conditions of the approved Use Permit USE97-0577, as set forth in the approval letter dated January 5, 1999, shall remain in effect except as specifically modified by the Preliminary Development Plan Application PDP2004-00008, and conditions set forth herein.
3. The approved Use Permit shall remain in full force and effect until the revised Use Permit implementing the PDP is approved, and the developer signs the revised use permit approval. Pursuant to Sec. 25-193 of the Zoning Ordinance, the validity period shall relate back to the approved Use Permit, giving the developer until December 2, 2010 to commence construction of Phase II and,

USA97-0577A  
May 23, 2005  
Page 2

thereafter, if 60% of the project (considering all three phases) is constructed on or before December 2, 2010, the developer shall until December 2, 2012 to commence construction of Phase III of the project.

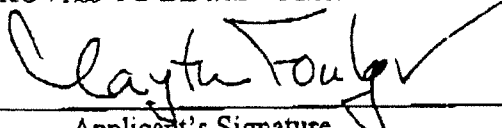
Sincerely,



Deane E. Mellander  
Acting Chief of Planning  
Community Planning and Development Services

Note: A building permit may be issued only when the conditions of approval have been met and a copy of the following acknowledgment, signed and executed by the applicant, has been returned to the Planning Division office. Be advised that this approval does not constitute approval by any department or agency having jurisdiction over this development project.

**I ACKNOWLEDGE RECEIPT OF USA97-0577A, AND AGREE TO FULLY COMPLY WITH CONDITIONS UPON WHICH APPROVAL WAS GRANTED. I FURTHER ACKNOWLEDGE THAT FAILURE TO COMPLY WITH THESE CONDITIONS MAY CAUSE APPROVAL TO BE REVOKED BY THE PLANNING COMMISSION.**

 8-15-05  
Applicant's Signature Date

CLAYTON FOULGER 8-15-05  
Applicant's Printed Name Date

DEM

cc: Art Chambers, Director, CPDS  
Susan Straus, Acting Director of Public Works  
Linda MacDermid, Chief of Inspection Services  
Larry Marcus, Chief of Traffic and Transportation  
Mark Wessel

bcc: Deane Mellander, Acting Chief of Planning  
Application File



"DAVE CELESTE"  
<cdave475@msn.com>  
07/25/2008 12:11 PM

To mayorcouncil@rockvillemd.gov  
CFunkhouser@rockvillemd.gov, aksamits@hotmail.com,  
cc howardeskildson@gmail.com,  
beryl.feinberg@montgomerycountymd.gov,  
bcc  
Subject Comments on Zoning Ordinance Draft - Election Signs

On behalf of the City of Rockville Board of Supervisors of Elections, this is to provide the Board's comments on the Zoning Ordinance Draft regarding election signs.

In early April, 2008 the Board of Supervisors of Elections solicited input from candidates who ran for City offices in 2007 and other interested persons regarding their experiences in running for office in Rockville. One issue that drew some comments was regulation of election signs. Suggestions from this group included:

- Allow at least five signs per property so that support can be expressed for a full ticket of candidates.
- Allow additional signs for corner properties fronting on multiple streets.
- Signs should be uniform in size.
- Rules about signs should be enforced
- Revise the timeframe on posting signs to restrictions in place prior to the last revision of the election signs law.
- Have no limitations on signs.

It's apparent that a range of opinions exist on this topic. The Board has reviewed these comments and suggests the following be considered in any revision to the election signs law.

- Instead of regulating the square footage in total of all signs on a property, designate the maximum size per sign. Then allow one sign per office and one sign per referendum, question, etc., that may also be on the ballot. This will limit complaints about oversized signs and allow expression of opinion on each office/issue on the ballot.
- Because of first amendment issues, the Board recommends no change to the current timeframe permitted for posting of election signs.

I am available to answer any questions you may have.  
Thanks.

Dave Celeste, Chair  
Board of Supervisors of Elections

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8300 Boone Blvd  
Fifth Floor  
Vienna, VA 22180

SETH T. STARK  
Admitted in MD, DC, VA  
  
ERIC G. MEYERS  
Admitted in DC  
  
ALAN D. EISLER  
Admitted in MD, DC, VA  
  
ERICA A. LEATHAM  
Admitted in MD, DC, VA

Exhibit No. 67  
Zoning Ordinance Rewrite  
PH Dates: 6/16 & 6/30/08

**STARK | MEYERS | EISLER | LEATHAM LLC**  
Attorneys At Law

July 25, 2008

Erica A. Leatham  
[eleatham@starkmeyers.com](mailto:eleatham@starkmeyers.com)  
direct: 240-283-1163

VIA ELECTRONIC AND  
FIRST CLASS MAIL

Mayor and Council of the City of Rockville  
111 Maryland Avenue  
Rockville, Maryland 20850

Re: Comprehensive Revision to the City of Rockville, Maryland Zoning Ordinance

Dear Mayor and Councilmembers:

On behalf of Lerner Enterprises, thank you for the opportunity to participate in your deliberations over the new Zoning Ordinance. An undertaking of this magnitude requires considerable patience and is only possible by the diligent efforts of your planning staff. In an effort to further refine the draft, Lerner endorses those changes to Article 14, discussed at your recent worksession, to maintain the integrity of the City's previous actions by formally grandfathering approved Comprehensive Planned Developments, such as Falls Grove.

As you are aware, Lerner has a considerable presence in the Falls Grove community and takes pride in the high quality product developed in Rockville and elsewhere in the region. As a company philosophy, Lerner does not develop sites until the time is right; vacant land is more attractive to the company than a vacant building. As a result, Lerner has a long term commitment to development in the region, including at Falls Grove. The company rarely sells its buildings and maintains its property to first-class standards (the Falls Grove medical building won the NAIOP Award of Excellence for Best Suburban Mid-Rise Office Building). Groundbreaking for the Falls Grove Hilton will occur very soon, the design of which was greatly improved by the Mayor and Council's input.

Although much of Falls Grove has been developed, Lerner maintains control of one undeveloped parcel along Research Boulevard. The property was previously the subject of an approved Detailed Application for an approximately 210,000 square foot office building. Several years ago, the Detailed Application was reviewed by the Mayor and Council and approved by the Planning Commission as consistent with the mandates and guidelines that control development within Falls Grove. A rendering of the approved building is enclosed. Unfortunately, Lerner was not able to find a suitable user for the building before the Detailed Application expired. However, Lerner has another Detailed Application, currently pending,

mirroring the site design and architecture of that already approved. In its efforts to develop this site, known as Corporate Center, the company has expended vast sums of money on designers and other consultants in reliance on the conditions of the Falls Grove CPD approval.

The building, as well as the hardscape and landscape, was designed to take advantage of the prominent corner and create a distinctive image for Falls Grove and the greater community. The building was also carefully designed to meet GSA requirements in anticipation of possible government tenants. After the Mayor and Council and Planning Commission review and approval of the site plan and architecture, building permit sets were prepared in anticipation of construction of Corporate Center (at substantial cost). Although a suitable tenant was not identified for the Corporate Center at that time, Lerner continues to market the building and remains confident a credit tenant will be identified in the near future. It was possible to create such a stunning image and site design, which has generated considerable interest throughout the region, because of the existing development standards; additional or different standards, as proposed under the draft Zoning Ordinance, would force a change in the building and site design. Such a change would be at a direct – and substantial – cost to Lerner, but would be an indirect cost to the city in the loss of a first-class corporate citizen in the building.

Consequently, the language of the Zoning Ordinance in Article 14, as it relates to the Planned Developments, is of particular interest. Your discussion at the July 22, 2008 worksession with respect to the treatment of projects within the Planned Development zone addressed Lerner's concerns over the scope of draft language, specifically, that the new zoning standards should not apply to any property subject to a Planned Development approval.

By way of background, as the language affects the Falls Grove development, nothing is grandfathered unless the project is approved and under construction (Section 25.14.07.d.3). This is critical language to maintain insurance and financing options for the buildings, but does not address the larger issue facing Lerner's holdings in Falls Grove. Specifically, Section 25.14.07.d.2 states:

Where, in the determination of the Approving Authority, the resolution of approval . . . does not provide specific standards, the development standards for the equivalent zone designation for each Planned Development apply to (a) any portion of a Planned Development project that does not have . . . an approved detailed application or (b) any portion of a Planned Development project for which an amendment to an approved . . . Detailed Application is sought.

In practical terms, this means that the Corporate Center design, which was previously approved and with a pending, but not approved, Detailed Application, is subject to considerable revision based on the standards of the equivalent zone. Although height and setbacks are clearly articulated in the Resolution approving the Falls Grove Concept Plan, the new standards of the equivalent zone (by virtue of the fact that they are new) were not. The implementation of some of the standards may necessitate a redesign of the building itself, as well as a redesign of the site plan. The application currently pending was already found to be consistent and harmonious with the Falls Grove design standards and the surrounding

development on Research Boulevard; to try and implement new standards on one of the only remaining undeveloped properties within Falls Grove would create an absurd result.

In the case of the CPDs, and, in particular, Falls Grove, where there are clear and comprehensive standards governing the initial development, the equivalent zone standards are unnecessary. The underlying residential zone for Falls Grove, R-S, has no relationship to the approved community; therefore, the Concept Plan spells out the various development standards which apply to the different development areas. In addition to the standards set forth in the Concept Plan Resolution of approval, Falls Grove also has Design Guidelines, a comprehensive sign package and a number of other architectural controls within the underlying Declaration of Covenants. The equivalent zone standards are superfluous and only add to the complexity of an already tightly circumscribed development.

In plain terms, Lerner has been abiding by the rules that were established with the original approval – Lerner and the other Falls Grove partners made significant contributions to the City for infrastructure, public space, etc – and now simply wants to continue to play by those rules. Applying new standards, even if they seem innocuous on the surface, has a very real and detrimental impact on the ability to achieve the density for which the Corporate Center property is entitled.

The MXE development standards, the Equivalent Zone for Corporate Center, have various standards that are appropriate for redevelopment in an independent context, but are not appropriate for new construction within Falls Grove. The Equivalent Zone standards may complete and, in some cases, contradict, these other standards. In that event, Corporate Center may not be approved as it was approved previously, which is an unacceptable consequence of the proposed zoning changes.

As stated above, all infrastructure to support Falls Grove has already been built and, therefore, compromising the ability to achieve the maximum density would be a substantial breach of the agreement made between Falls Grove Associates and the City via the Concept Plan. The developer relied upon the approvals contained in the Concept Plan and implemented, in advance, those conditions required to support the development at substantial cost: an internal road network, external road and intersection improvements, open space, and a site for a community center and a school, among others. Therefore, under the guise of a zoning revision, the City cannot seek to undercut that density to which the developer is entitled.

We, therefore, support the comments in Exhibit 9 from Mr. Kominers and the Mayor and Council “straw vote” from July 22, 2008 to exclude projects proceeding under already approved PD approvals from the equivalent zone standards:

25.14.07.d.2 – Any improvement constructed or to be constructed pursuant to an approved Special Development Procedure approved prior to [the effective date of the Zoning Ordinance] shall be developed, redeveloped, altered, renovated, enlarged, or replaced subject to the governing standards associated with the Special Development Procedure at the time of its approval and is not subject to the standards herein, except as articulated in Section 25.14.07(d)(6) [Amendment of a Planned Development]. Notwithstanding the foregoing, at its discretion, an applicant for development, redevelopment, alteration, renovation, enlargement or

replacement under a Special Development Procedure may apply any of the standards contained in Chapter 25 as adopted [effective date] subject to the provisions of Article 7.

Sections 25.14.07.d.2 through d.5 should be deleted or revised.<sup>1</sup> The term Special Development Procedure will need to be defined as a Comprehensive Planned Development, Preliminary Development Plan, Planned Residential Unit, etc.

In the alternative, Lerner proposes that the following language be added to Section 25.14.25:

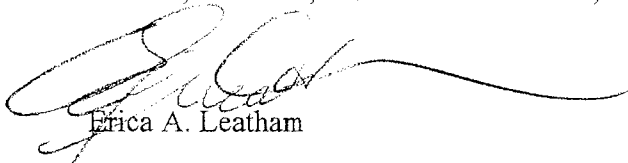
25.14.25.c – Development standards shall be those standards approved by the Mayor and Council as set forth in the Resolution of approval for the Falls Grove development, as amended, notwithstanding any contrary or additional development standards contained herein. Any amendment to the Falls Grove development shall be subject to the provisions of 24.14.07.d.6

Site Plan Approval. Finally, we propose a modification to the Site Plan review process for site plans proceeding under a Special Development Plan approval. As currently drafted, the Chief of Planning has discretion to determine the level of review required (Section 25.14.07.d.8). However, this language adds an unnecessary level of uncertainty to the review process. We propose that a site plan review be designated a Level 2 review under Section 25.07.04. This is consistent with the proposed treatment of site plans following project plans in which the overall concept plan has already been thoroughly vetted by the Mayor and Council, and the existing process for Falls Grove and numerous other Special Development Procedures.

Thank you for your attention to this matter. If you have any questions or desire additional information, please do not hesitate to contact us.

Sincerely,

STARK, MEYERS, EISLER & LEATHAM, LLC



Erica A. Leatham

cc: Mr. Arthur N. Fuccillo  
Mr. James D. Policaro

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<sup>1</sup> Section 25.14.07.d.4 would have to be incorporated into Section 25.14.07d.6.